

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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| ARUTYUN DEMIRCHYAN, |) | CV 08-3452 SVW (MANx) |
| |) | |
| Petitioner, |) | |
| |) | SUPPLEMENTAL FINDINGS OF FACT |
| v. |) | AND CONCLUSIONS OF LAW |
| |) | |
| ALBERTO R. GONZALES, Attorney |) | |
| General, |) | |
| |) | |
| Respondent. |) | |

I. INTRODUCTION AND BACKGROUND

On May 5, 2008, the Ninth Circuit transferred this action to this Court pursuant to 8 U.S.C. § 1252(b)(5) in light of genuine issues of material fact regarding Petitioner's claim to citizenship. See Demirchyan v. Mukasey, 278 Fed. Appx. 778, 779 (9th Cir. 2008). The Court was charged with conducting a *de novo* hearing to evaluate Petitioner Arutyun Demirchyan's claim that he is a United States citizen. Id. This determination turns on whether Petitioner was born in 1976 or 1977. If, as Petitioner claims, he was born in 1977, then he is entitled to derivative U.S. citizenship because he was under the age of 18 when his mother became a U.S. citizen. However, if Respondent is correct that Petitioner was born in 1976, then he is

ineligible for derivative citizenship because he was over the age of majority when his mother naturalized. See 8 U.S.C. § 1432(a) (West 1994), *repealed by* Child Citizenship Act of 2000, § 103, Pub. L. No. 106-395, 114 Stat. 1631.¹ Absent such derivative citizenship, Petitioner is subject to the removal order issued against him in 2000.

To resolve Petitioner's status, the Court held evidentiary hearings on August 25, 2009 and June 16, 2010. (Dkt. 25, 41). On September 8, 2010, the Court issued its Findings of Fact and Conclusions of Law, holding that Petitioner was not a U.S. citizen because he failed to prove by a preponderance of the evidence that he was born in 1977. See *Demirchyan v. Gonzales*, No. CV 08-3452 SVW (MANx), 2010 WL 3521784 (C.D. Cal. Sept. 8, 2010). In so concluding, the Court principally relied on two documents indicating that Petitioner was born in 1976: (1) his Registration for Classification as Refugee; and (2) a copy of Petitioner's birth certificate issued in July 1988, which he submitted to the United States embassy in Moscow to emigrate to this country ("1988 Birth Certificate"). Id. at *13.

¹At the relevant time period, the operative statute provided:

A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

. . .

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents . . . ; and if

(4) **Such naturalization takes place while such child is under the age of eighteen years;** and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of . . . the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

8 U.S.C. § 1432(a) (West 1994) (emphasis added).

1 Conversely, the Court rejected other items of evidence that
2 purported to show that Petitioner was born in 1977. Most notably, the
3 Court rejected a copy of another birth certificate issued by Armenia in
4 2000 ("2000 Birth Certificate") on the ground that it was inadmissible
5 hearsay, since it failed to satisfy the public records exception. Id.
6 at *18. Additionally, the Court rejected as incredible the testimony
7 of (1) Petitioner's mother, who averred that the 1988 Birth Certificate
8 was inaccurate; and (2) Petitioner's brother, who suggested that the
9 1988 Birth Certificate was the product of a clerical error. Id. at
10 *15. In short, the Court concluded that Petitioner was not a U.S.
11 citizen pursuant to 8 U.S.C. § 1432(a), and returned the matter to the
12 Ninth Circuit for further proceedings. Id. at *18-19.

13 Upon return to the Ninth Circuit, Petitioner filed a motion to
14 supplement the record with "new" evidence. Fed. R. App. P. 10(e)(2).
15 Instead of granting the motion, the Ninth Circuit concluded that "there
16 continues to be an unresolved 'genuine issue of material fact about the
17 petitioner's nationality.'" (Dkt. 61). Accordingly, the panel
18 returned the case to this Court "in order to permit the parties to move
19 . . . for admission of documents not previously presented there, and to
20 permit the district court to reconsider its findings of fact and
21 conclusions of law in light of any such evidence it deems admissible."
22 (Id.).

23 On July 19, 2011, pursuant to the Ninth Circuit's order,
24 Petitioner lodged with this Court twelve "new" Exhibits A through L.
25 (Dkt. 65). The most prominent of these documents appears to be a copy
26 of Petitioner's birth certificate issued by Armenia in 1997, which
27 indicates a birthdate of July 27, 1977 ("1997 Birth Certificate").
28

1 (Dkt. 65, Ex. A). The remaining eleven exhibits also show a birth year
2 of 1977, including copies of two U.S. passports issued to Petitioner
3 (Exs. B, C); a copy of an Armenian passport (Ex. D); a copy of Form I-
4 90 application to replace Permanent Resident Card filled out by
5 Petitioner in December 2001 (Ex. E); various pages from the Immigration
6 and Naturalization Service ("INS") database (Exs. F-K); and a copy of
7 an Application for Certificate of Citizenship submitted by Petitioner
8 in October 2000 (Ex. L).

9 On July 25, 2011, the Court explained that it read the Ninth
10 Circuit's transfer order to mean that the Court must "determine whether
11 the new documents attached on Appeal are admissible and then make
12 changes to its findings, if necessary." (Dkt. 68). To this end, the
13 Court ordered the Petitioner "to file a memorandum with attached
14 declarations that allow the Court to determine whether the documents
15 are admissible," and "if [they] are found admissible, why they should
16 change the Court's earlier findings." (Id.). Petitioner complied
17 (Dkt. 69), and Respondent filed a response (Dkt. 71).

18 On October 24, 2012, the Court conducted further evidentiary
19 hearing to elicit testimony from witnesses who could speak to these
20 "new" exhibits, in particular the purported 1997 Birth Certificate.
21 (Dkt. 79, 82). The Court heard testimony from (1) Petitioner Arutyun
22 Demirchyan; (2) Petitioner's mother, Susanna Demirchyan; (3) Asatur
23 Guyumjyan; and (4) Zara Hovanisyan. (Dkt. 86).²

24 Having reviewed the parties' briefing, documentary evidence, and
25 live testimony with respect to these "new" exhibits, and taking into
26

27 ² The Court will detail below the testimony of these persons as
28 necessary in the course of its findings of fact.

1 account the Court's previous findings and conclusions, the Court now
2 re-examines the merits of Petitioner's claim.

3 **II. FINDINGS OF FACT**

4 The Court set forth several findings of fact in its previous Order
5 dated September 10, 2008, which need not be repeated here. Demirchyan,
6 2010 WL 3521784 at *13-18. Since then, the Court has received
7 Petitioner's submission of twelve "new" exhibits as well as affidavits
8 and oral testimony from witnesses in support of these documents. The
9 sole inquiry is whether such evidence leads the Court to alter its
10 original findings. Having reviewed these evidentiary submissions and
11 related pleadings, the Court makes the following additional factual
12 findings.

13 **A. 1997 Birth Certificate (Exhibit A)**

14 Petitioner has submitted a copy of a birth certificate that, based
15 on the English translation, appears to have been issued by Armenia on
16 April 29, 1997, and which states that Petitioner was born on July 27,
17 1977. (Dkt. 65, Ex. A).

18 Before it can discern the evidentiary value of the 1997 Birth
19 Certificate, the Court must determine if it is admissible. "Hearsay
20 and authentication are separate and independent requirements for
21 evidentiary admissibility." Demirchyan, 2010 WL 3521784, at *3. The
22 Court addresses the document's authenticity first.

23 **1. Authentication**

24 A document may be authenticated by virtue of its own contents,
25 Fed. R. Evid. 902, or on the basis of extrinsic evidence "sufficient to
26 support a finding that the matter in question is what its proponent
27 claims." Fed. R. Evid. 901(a).
28

1 **a. Self-Authentication**

2 The 1997 Birth Certificate is not self-authenticating. Title 28
3 U.S.C. § 1741 provides that "[a]n official record or document of a
4 foreign country may be evidenced by a copy, summary, or excerpt as
5 authenticated as provided in the Federal Rules of Civil Procedure." 28
6 U.S.C. § 1741. The Federal Rules of Civil Procedure provide:

7 (A) *In General*. Each of the following evidences a foreign
8 official record--or an entry in it--that is otherwise
admissible:

- 9 (i) an official publication of the record; or
10 (ii) the record--or a copy--that is attested by an
11 authorized person and is accompanied either by a
12 certification of genuineness or by a
certification under a treaty or convention to which
the United States and the country where the record
is located are parties.

13 (B) *Final Certification of Genuineness*. A final
14 certification must certify the genuineness of the
signature and official position of the attester or of
15 any foreign official whose certificate of genuineness relates to the
attestation or is in a chain of certificates of genuineness relating to
16 the attestation. A final certification may be made by a secretary of a
United States embassy or legation; by a consul general, vice consul, or
17 consular agent of the United States; or by a diplomatic or consular
official of the foreign country assigned or accredited to the United
States.

18 (C) *Other Means of Proof*. If all parties have had a
19 reasonable opportunity to investigate a foreign record's
20 authenticity and accuracy, the court may, for good
cause, either:

- 21 (i) admit an attested copy without final certification;
22 or
23 (ii) permit the record to be evidenced by an attested
summary with or without a final certification.

24 Fed. R. Civ. P. 44(a)(2).³ Under the Hague Convention, a model

25
26 ³ Federal Rule of Evidence 902(3) also governs the authenticity of
27 evidence consisting of foreign public documents. Rule 902(3) is
28 substantively identical to Fed. R. Civ. P. 44, except that it does
not mention the alternative method of certification pursuant to a
treaty or convention.

1 apostille may be used in place of the final certification demanded
2 under Rule 44(a)(2)(A)(ii). See United States v. Nunez-Beltran, No.
3 10cr522 JM(CAB), 2010 WL 2985490, at *4 (S.D. Cal. July 26, 2010).

4 None of the foregoing conditions are met here. Petitioner has
5 submitted an unofficial photocopy of the 1997 Birth Certificate. (Dkt.
6 65, Ex. A). Though the English translation is notarized, it is unclear
7 what the notary is attesting to. In any event, the 1997 Birth
8 Certificate is not accompanied by any "final certification of
9 genuineness" or model apostille under the Hague Convention indicating
10 that the notary was authorized to attest to the document's
11 authenticity. Fed. R. Civ. P. 44(a)(2)(A)(ii). Moreover, for reasons
12 explained further below, the Court does not find that good cause exists
13 to relax the certification requirement. Fed. R. Civ. P. 44(a)(2)(C).
14 Therefore, the document's authenticity is not self-evident.

15 **b. Extrinsic Evidence**

16 Even where self-authentication is unavailable, however, a document
17 may still be authenticated through extrinsic evidence "sufficient to
18 support a finding that the item is what the proponent claims it is."
19 Fed. R. Evid. 901(a); see Vatyán v. Mukasey, 508 F.3d 1179, 1183-84
20 (9th Cir. 2007). For example, in Vatyán, the Court held that the
21 immigration judge erred in refusing to consider the petitioner's own
22 testimony that his Armenian documents bore certain indicia of
23 authenticity. Id. at 1184-85. However, just because a judge *may*
24 consider such testimony "does not mean that the [judge] *must* accept the
25 documents into evidence or deem their contents to be true." Id. That
26 decision ultimately will depend on the strength of the evidentiary
27 showing of authenticity.
28

i. Petitioner's Allegations

The Court begins with the alleged provenance of the 1997 Birth Certificate. To support the authenticity of the 1997 Birth Certificate, Petitioner relies on the written and oral testimony of (1) himself; (2) his mother, Susanna Demirchyan; (3) his former neighbor in Armenia, Asatur Guyumjyan; and (4) his girlfriend's mother, Zara Hovanisyan. Their collective testimony is summarized below.

In or about 1992, Petitioner's mother, Susanna Demirchyan ("Susanna") sent a power of attorney to her former neighbor in Armenia, Lusine Jambaryan, to obtain a "corrected" birth certificate for Petitioner from Armenian authorities. (Dkt. 69, Ex. B ("Susanna Aff.") ¶ 19). This attempt failed because Jambaryan committed suicide. (Id. ¶ 20). In or about 1996, Susanna asked and authorized another former neighbor in Armenia, Asatur Guyumjyan ("Guyumjyan"), to obtain a birth certificate for Petitioner. (Id. ¶ 20). Susanna avers that "in 1997 Asatur arranged for someone to bring the corrected birth certificate to me." (Id.).

According to Guyumjyan's affidavit, he personally went to the City Hall in Yerevan, Armenia, to fill out the request for a birth certificate. (Dkt. 69, Ex. M ("Guyumjyan Aff.") ¶ 8). Approximately two weeks later, Guyumjyan returned to City Hall to retrieve the certificate. (Id. ¶ 10). Guyumjyan states in his affidavit that "[s]oon after receiving the birth certificate, [he] found out about a person who was travelling from Armenia to the United States . . . met this person at the airport and gave them [Petitioner's] certified birth certificate for delivery in the United States." (Id. ¶ 11).

In the fall of 1997, Susanna claims that she and Petitioner

1 visited the INS office in Los Angeles to present a copy of the 1997
2 Birth Certificate. (Susanna Aff. ¶ 21). She avers that upon their
3 arrival, an INS agent instructed them to mail the original, along with
4 a translation, to the INS. (Id. ¶ 21). Susanna states in her
5 affidavit that she complied. (Id. ¶ 22). According to her, the next
6 time she saw the 1997 Birth Certificate was at Petitioner's removal
7 proceedings in 2000, when the INS attorney handed the certificate to
8 the immigration judge. In Susanna's words, the birth certificate "was
9 not in the best of shape" at the time, and "the immigration judge
10 commented that it was 'well worn.'" (Id. ¶ 25). The immigration judge
11 asked Susanna to have the original 1997 Birth Certificate authenticated
12 in Armenia. (Id.). Thus, in November 2000, Susanna returned to
13 Yerevan to authenticate the 1997 Birth Certificate. Instead of
14 authenticating it, however, the Armenian official kept the 1997
15 document and issued a new birth certificate dated 2000, which also
16 reflected a birthdate of July 27, 1977. (Id. ¶ 25).

17 Petitioner also relies on the affidavit of Zara Hovanisyan to
18 corroborate the authenticity of the 1997 Birth Certificate. According
19 to Petitioner, Hovanisyan has "extensive knowledge about Armenian
20 Archives and the official practices of the Archives." (Dkt. 69 at 11).
21 In her affidavit, Hovanisyan avers that she "clearly recognize[s]" the
22 1997 Birth Certificate as "consistent with one issued by the Armenian
23 government." (Dkt. 69, Ex. N ("Hovanisyan Aff.") ¶ 5). In particular,
24 she attests that the shape of the seal is "exactly the type" used by
25 the Armenian government and located in the place where an archivist
26 would put the seal. (Id.). She further testifies that the symbols,
27 language, and layout of the document are "exactly those used by the
28

1 Armenian government on birth certificates." (Id.). Accordingly, she
2 concludes that the 1997 Birth Certificate "is a valid document done
3 according to law." (Id.).

4 **ii. Analysis**

5 Although courts must consider extrinsic evidence relating to the
6 authenticity of a proffered document, this "does not mean that the
7 [Court] *must* accept the document[] into evidence or deem [its] contents
8 to be true." Vatyan, 508 F.3d at 1185. Courts "retain broad
9 discretion to accept a document as authentic or not based on the
10 particular factual showing presented." Id. In this case, although the
11 Court must consider the foregoing testimony "as evidence that is
12 relevant to the issue of the [certificate's] authenticity," the Court
13 "can assess the credibility of that testimony and determine whether the
14 balance of the evidence is sufficiently compelling to satisfy him that
15 the documents are what [its proponent] claims them to be." Id.⁴ For
16 the reasons below, the Court concludes that the balance of evidence
17 presented by Petitioner is insufficient to persuade the Court that the
18 1997 Birth Certificate is genuine.

19 As a preliminary observation, the basic premise that Susanna
20 entrusted a tourist from Armenia to deliver her son's birth certificate
21 to the United States, when she could have used a mail delivery service,
22

23 ⁴ In Vatyan, the Ninth Circuit elaborated that a court "need not
24 accept all documents as authentic nor credit documentary submissions
25 without careful scrutiny so long as the rejection is premised on more
26 than a guess or surmise." Id. at 1185 n.4 (internal quotation marks
27 omitted). Moreover, even if a court "concludes that the petitioner
28 has presented sufficient prima facie evidence of a document's
authenticity to admit it into evidence, the [court] as the trier of
fact retains discretion to weigh the evidence's credibility and
probative force." Id. (internal citation and quotation marks
omitted).

1 strikes the Court as fanciful. Even forgetting this facial
2 peculiarity, however, the Court cannot accept the alleged provenance of
3 the 1997 Birth Certificate because it is marred, from start to finish,
4 by material gaps and troubling inconsistencies in the record.

5 **(a) Who Obtained the Certificate**

6 First, Guyumjyan testified that he obtained the 1997 Birth
7 Certificate from the city hall in Yerevan, Armenia in 1997. However,
8 during Petitioner's deposition in May 2009, which was admitted into
9 evidence in the prior evidentiary hearing, Petitioner affirmatively
10 stated that it was his cousin, Hovhannes Kachanyan ("Hovhannes"), who
11 obtained the 1997 Birth Certificate from Armenian government.⁵ (Tr. II
12 at 8-10). Petitioner never mentioned Guyumjyan's role until the
13 instant proceeding.

14 Guyumjyan testified that the copy of the 1997 Birth Certificate
15 entered into evidence is the "exact certificate" which he received from
16 the Armenian archives. (Dkt. 86 ("Tr. II") at 93:9-25). He has,
17 however, failed to supply any evidence that would tend to corroborate
18 that he obtained the certificate, such as a copy of the alleged power
19 of attorney provided to him, copies of paperwork filled out at the
20 Armenian City Hall, or receipts of payment for the birth certificate.
21 The absence of such documentary proof, along with the circumstantial
22 evidence discussed below, militates against the trustworthiness of
23 Guyumjyan's account.

24
25 ⁵ This is corroborated by Susanna's 2009 deposition testimony, in
26 which she likewise testified that her relative, not the neighbor,
27 obtained the 1997 Birth Certificate. (Tr. II at 46:10-14). However,
28 because her deposition has not been admitted into evidence, and
because Susanna did not confirm in court that she made this
statement, the Court refrains from relying on her inconsistent
deposition testimony.

(b) Who Found the Tourist

The witnesses have also made contradictory statements about how Guyumjyan located the mystery tourist. Although the witnesses stated during the last evidentiary hearing that Guyumjyan identified and contacted the tourist through Hovhannes, who knew the tourist was coming to the United States, nowhere in the witnesses' previously filed affidavits do they even mention Hovhannes's key role. (Compare Tr. II at 101:5-14 with Guyumjyan Aff. ¶ 12); (Compare Susanna Aff. ¶ 20 with Tr. II at 59:25-62:16); (Compare Tr. II at 39:5-7 with Dkt. 69-1 ("Pet. Aff.") ¶ 16). Additionally, although Guyumjyan stated in his declaration that he delivered the certificate to the tourist at the airport, Guyumjyan averred in court that he and Hovhannes delivered the 1997 Birth Certificate to the tourist at his or her home. (Compare Tr. II at 102-103, 112 with Guyumjyan Aff. ¶ 12). The Court finds it highly suspect not only that these witnesses have equivocated on the most basic facts of this story, but that their memories have changed in lockstep. This sort of parallel evolution in testimony is not a sign of reliability, but of orchestration.

(c) Who Was the Tourist

The most troubling aspect of the proffered account is the shroud of mystery that surrounds the purported tourist. It is incredible that neither Guyumjyan nor Susanna remember the name or any traits of the tourist, whom they both met in person. Such ignorance is especially difficult to comprehend given the gravity of the courier's task. (Tr. II at 62-63, 102-103). This glaring void in Guyumjyan's memory is all the more incredible when contrasted against his vivid memory that when he allegedly retrieved the 1997 Birth Certificate, he asked the

1 Armenian official why the stamp was incomplete, and the official
2 responded that they did not have ink. (Tr. II at 94:15-18). It is
3 likewise hard to accept that Susanna could not recall the circumstances
4 of receiving the birth certificate from the tourist, such as whether
5 they met at home or in public. (Tr. II at 62-63). Perhaps most
6 implausible, though, is Susanna's in-court assertion that she was *not*
7 *told* the name of the tourist. (Tr. II at 62:22-23). It defies common
8 sense to believe that a person awaiting an important document to be
9 delivered overseas by a stranger would not have been told, at a
10 minimum, the name of the courier.

11 **(d) What Happened to the 1997 Birth**
12 **Certificate**

13 There is also inconsistent testimony regarding the events that
14 followed the alleged delivery of the 1997 Birth Certificate to Susanna
15 in the United States. Although Susanna stated in the 2009 evidentiary
16 hearing that after receiving the 1997 Birth Certificate, she gave it to
17 her son and did nothing more with it, she contradicted herself in the
18 recent hearing by testifying that she accompanied her son to the INS
19 office to try to update his records with the 1997 Birth Certificate.
20 (Compare Dkt. 26 ("Tr. I") at 24:1-13, Tr. II at 52:2-5 with Tr. II at
21 64:18; Susanna Aff. ¶ 21).⁶ Tellingly, the 1997 Birth Certificate was
22 not at issue at the time of the 2009 hearing, which focused on the
23 authenticity of the 2000 Birth Certificate. Thus, it was only when the
24 1997 Birth Certificate became the crux of Petitioner's case that

25 ⁶ The Court notes that the foregoing documents are not being relied
26 upon for the truth of their contents but rather were introduced as
27 impeachment evidence. Accordingly, the hearsay rules do not apply to
28 these documents. See Fed. R. Evid. 801(c) ("Hearsay" is a statement
... offered in evidence to prove the truth of the matter
asserted.").

1 Susanna suddenly remembered additional details to flesh out the chain
2 of events concerning the 1997 Birth Certificate. Here again, Susanna's
3 conveniently timed flip-flop substantially weakens the reliability of
4 her account.

5 Susanna has also given contradictory versions of the chain of
6 custody of the 1997 Birth Certificate after her visit to the INS. In
7 her affidavit, Susanna stated that after visiting the INS, she and
8 Petitioner mailed the original birth certificate along with its English
9 translation to the INS, and that she did not get the original back
10 until the 2000 removal proceedings. (Susanna Aff. ¶ 22). In court,
11 however, Susanna and Petitioner testified that they only mailed the
12 translation to the INS, and that they kept the original in a box in her
13 home. (Tr. II at 34-35, 69-70). Yet the immigration judge in 2000
14 observed that the 1997 Birth Certificate was "well worn." (Susanna
15 Aff. ¶ 24); (Dkt. 69, Ex. O at 363). The Court cannot fathom how a
16 birth certificate obtained in 1997 and kept in a box would become "well
17 worn" in three years. Susanna's apparent inability to set forth
18 consistently these fundamental facts, combined with the general
19 implausibility of her current story, seriously undermines the Court's
20 confidence in the veracity of this account.

21 **(e) Hovanisyan**

22 Finally, although Zara Hovanisyan attested in her affidavit that
23 the 1997 Birth Certificate is authentic, even if she was found
24 truthful, there are gaps in the foundation for her testimony. Even
25 though Hovanisyan worked in the Armenian Archives between 1978 and
26 1983, her job as an "archival fund preserver" simply entailed recording
27 documents before transferring them to the archives. (Tr. II at 127).
28

1 She admitted in court that birth certificates were dealt with in a
 2 different division than hers, that her job description never included
 3 authenticating birth certificates, and that she never received training
 4 in that respect. (Tr. II at 123:9-17). As such, her experience with
 5 birth certificates is premised solely on the vague proposition that she
 6 has "had contact" with these documents. (Tr. II at 123:11-12, 137:4-
 7 7). Even crediting that statement, the Court has found no basis to
 8 infer that the birth certificates Hovanisyan encountered in 1983,
 9 including their stamps and symbols, even remotely resembled the birth
 10 certificates being issued fourteen years later in 1997. In other
 11 words, there is a lack of foundation to believe that Hovanisyan
 12 acquired the knowledge needed to recognize the style and symbols on the
 13 1997 Birth Certificate to be genuine. In view of this threadbare
 14 foundation, the Court accords Hovanisyan's opinion minimal weight.⁷

15 **(f) Potential Biases**

16 In viewing the pervasive inconsistencies and gaps in the alleged
 17 provenance of the 1997 Birth Certificate, the Court's skepticism is
 18 only heightened by these key witnesses' obvious motivation to protect
 19 Petitioner. As already noted, Hovanisyan has known Petitioner for two
 20 years and her daughter currently is dating Petitioner. Guyumjyan and
 21 Petitioner grew up together, as their families were next door neighbors
 22 in Armenia for twelve years. (Guyumjyan Aff. ¶¶ 2-3). Susanna has a
 23

24 ⁷ Hovanisyan's testimony is unreliable for the additional reason that
 25 her daughter, Angie Markosian, is currently dating Petitioner. (Tr.
 26 at 124-25). Hovanisyan further admitted on re-direct that Petitioner
 27 is her former son-in-law's friend, and that she has known Petitioner
 28 for close to two years. (Tr. at 125). Hovanisyan's lack of
 experience with authenticating birth certificates, coupled with her
 obvious motivation to protect her daughter's friend, renders her
 testimony incredible.

1 natural incentive to protect her child. See Cuellar v. Joyce, 596 F.3d
2 505, 511 (9th Cir. 2010) (probative value of sister's report was
3 "limited given the sister's likely bias," along with other factors).
4 Even absent these potential biases, however, the Court would still
5 reject the proffered explanation of the 1997 Birth Certificate's
6 origin, for the reasons already discussed.

7
8 **(g) General Observations**

9 Two additional observations cause the Court to look askance at the
10 foregoing testimony. First, the form of Guyumjyan and Susanna's
11 affidavits is nearly as troubling as their content. Preliminarily,
12 neither Guyumjyan nor Susanna's signed affidavits bear any date of
13 execution. Moreover, because Guyumjyan has trouble reading English,
14 (Tr. II at 88:11-12), he signed his affidavit (written in English) only
15 after reviewing it with a translator, who explained its contents to him
16 in Armenian. (Tr. II at 89:11-14, 97:16-23, 105:11-15). Meanwhile,
17 Susanna's original, signed affidavit was typed in Armenian, and
18 subsequently translated into English by the same person who translated
19 for Guyumjyan. (Dkt. 69-2 at 6). Disturbingly, this translator was
20 Angie Markosyan, who is not only the daughter of another witness, Zara
21 Hovanisyan, but who is currently in a dating relationship with
22 Petitioner. (Tr. II at 97, 105-106, 124-25).⁸ The fact of Markosyan's
23 involvement alone casts an even darker shadow over the alleged

24 ⁸ The Court observed that Guyumjyan was evasive when questioned about
25 the translator on cross-examination. When Respondent asked him who
26 translated his affidavit to him, Guyumjyan did not provide a name,
27 but only stated, "Not a relative." (Tr. II at 97:23). This response
28 is puzzling since Respondent never suggested that it was a relative.
Rather, it appears to be a transparent attempt to deflect attention
from the fact that the translator was Petitioner's girlfriend. The
Court finds that Guyumjyan's defensive demeanor bolsters the
conclusion that his testimony is unreliable.

1 provenance of the 1997 Birth Certificate.

2 Second, viewing the record generally, the fact that the 1997 Birth
3 Certificate was formally brought to this Court's attention for the
4 first time in the instant proceeding is itself cause to view the
5 document's authenticity with suspicion. Petitioner contends that his
6 former counsel, James Rosenberg, was ineffective in failing to present
7 the 1997 Birth Certificate during the first iteration before this
8 Court. For his part, Attorney Rosenberg has submitted an affidavit
9 stating that he did not offer the 1997 Birth Certificate because he did
10 not have an original version, and because he believed it was more
11 appropriate to submit the 2000 Birth Certificate, which bears a model
12 apostille. (Dkt. 69, Ex. F ("Rosenberg Aff.") ¶ 4).

13 The Court finds this explanation unsatisfactory. By the close of
14 the August 25, 2009 evidentiary hearing, it was already clear that the
15 2000 Birth Certificate's authenticity would be contested by Respondent.
16 Specifically, during that hearing, Respondent sought to introduce
17 testimony from the consular official in Yerevan, Armenia, stating that
18 the 2000 Birth Certificate was fraudulent. (Tr. I. at 63-66).
19 Moreover, the Court continued the evidentiary hearing until June 15,
20 2010, and invited the parties to file supplemental briefs concerning
21 the consular official's diplomatic note concerning the authenticity of
22 the 2000 Birth Certificate. (Dkt. 30, 34). In view of foregoing, it
23 strains credulity to claim that Attorney Rosenberg continued to
24 withhold the 1997 Birth Certificate because he believed the 2000 Birth
25 Certificate was stronger evidence. Rather, common sense dictates that
26 introducing the 1997 Birth Certificate during this intervening period
27 could have, at a minimum, helped to corroborate the origin of the 2000
28

1 Birth Certificate.

2 Nor can Petitioner hide behind the alleged ineptitude of Attorney
3 Rosenberg, since Rosenberg was replaced by Attorney Platt on January
4 26, 2010, more than *five months before* the Court's second evidentiary
5 hearing on June 16, 2010. (Dkt. 33, 41). Petitioner posits that
6 Attorney Platt also misunderstood the importance of the 1997 Birth
7 Certificate, but this is naked speculation.⁹ (Dkt. 69 at 6). Given
8 that the 2000 Birth Certificate's authenticity was drawn into doubt as
9 early as August 2009, the logical response was to submit the 1997 Birth
10 Certificate as supportive evidence. Yet both Petitioner's attorneys
11 declined to do so. It is plausible to infer that neither attorney had
12 faith in the 1997 Birth Certificate's admissibility.

13 * * *

14 In sum, the Court concludes that Petitioner has failed to produce
15 credible extrinsic evidence "sufficient to support a finding that the
16 item is what the proponent claims it is." Fed. R. Evid. 901(a). The
17 witnesses' collective account is fraught with gaps, inconsistencies,
18 and biases, and the testimony of Hovanisyan is simply not probative.
19 Taken together, this evidence is insufficiently compelling to persuade
20 the Court that the 1997 Birth Certificate is what Petitioner claims.
21 Vatyan, 508 F.3d at 1185. Moreover, the 1997 Birth Certificate lacks
22 the qualities to meet the criteria for self-authentication. For all
23 the foregoing reasons, the Court concludes that the 1997 Birth
24 Certificate is inadmissible and shall be excluded from evidence.¹⁰

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26 ⁹ Attorney Platt did not submit an affidavit, much less state what
Petitioner claims.

27 ¹⁰ Furthermore, even if the 1997 Birth Certificate were admissible,
28 the Court would refrain from crediting the facts stated in the

1 **B. Passports (Exhibits B, C, D)**

2 Upon transfer from the Ninth Circuit, Petitioner also submitted
3 for the Court's consideration copies of: (1) a United States passport
4 issued in 2002; (2) a United States passport issued in 2009; and (3) an
5 Armenian passport issued in 2007, all indicating Petitioner's birth
6 year as 1977. (Dkt. 65, Exs. B, C, D).

7 Even assuming these passports are admissible, they carry minimal
8 weight. The contents of these passports reflect the birth date
9 reported by Petitioner in his applications. However, the Court notes
10 that the United States initiated removal proceedings against Petitioner
11 in August 2000. Demirchyan, 2010 WL 3521784, at *13. Therefore, these
12 passports are inherently unreliable because they were applied for after
13 Petitioner had a motive to prove that his birth year was 1977. As
14 such, they are insufficient to overcome the substantial contrary
15 evidence, highlighted in the Court's previous order, indicating that
16 Petitioner's birth year is in fact 1976.¹¹

17
18 document. Not only is the alleged provenance of the document
19 implausible on its face, it is founded upon the inconsistent and
20 biased testimony of Petitioner's mother, childhood friend, and
21 girlfriend's mother. The fact that the 1997 Birth Certificate was
22 first introduced to this Court at this late stage adds yet another
23 layer of suspicion. This weak evidentiary basis, mired in doubt, is
insufficient to overcome the evidence from the Court's previous
findings, which firmly showed that Petitioner was born in 1976.
Accordingly, even if it were admissible, the 1997 Birth Certificate
would not alter the Court's prior order.

24 ¹¹ Petitioner contends that his post-removal self-reporting of the 1977
25 birth date reflected his effort to "correct the record." (Dkt. 69 at
26 19). This assertion begs the question of Petitioner's true
27 birthdate. For the same reasons discussed in its previous order, the
Court finds Petitioner's naked assertion to be both incredible (due
28 to Petitioner's clear bias and to his former perjury convictions,
Fed. R. Evid. 609(a)(2)) and lacking in personal knowledge, see Fed.
R. Evid. 602.

C. Form I-90 & Form N-600 Applications (Exhibits E, L)

Petitioner also attached (1) Exhibit E, a Form I-90 application to replace a permanent resident card; and (2) Exhibit L, a Form N-600 application for certificate of citizenship, both of which indicate a birthdate of July 27, 1977. (Dkt. 65, Exs. E, L). However, these forms were filled out by Petitioner after the United States commenced removal proceedings against him. As such, Petitioner's self-reported birthdate is unreliable because he had an incentive to represent that his birth year was 1977. Accordingly, even assuming these exhibits are admissible, the Courts finds that they are eclipsed by the uncontroverted evidence arising prior to the removal proceedings indicating a 1976 birth year.

D. INS Database Documents (Exhibits F-J)

Exhibits F through J purport to be documents from INS records reflecting Petitioner's birth year as 1977. Petitioner claims he received these documents from the United States in response to a FOIA request. (Dkt. 69 at 18). Similar to the passports, however, the birth dates in these exhibits are based on Petitioner's self-reporting, and these database documents were generated after the government initiated removal proceedings against Petitioner. Therefore, these records are insufficient to controvert the evidence of Petitioner's 1976 birth year.¹²

¹² Alternatively, these exhibits are inadmissible because Petitioner has failed to establish their authenticity. The documents are not self-authenticating, as they do not bear any official seals of the INS or official therein. Fed. R. Evid. 902. Nor did Petitioner proffer extrinsic evidence of their authenticity in his pleadings or at the hearing.

1 **E. Record of Deportable/Inadmissible Alien (Exhibit K)**

2 Exhibit K provides Form I-213, prepared in conjunction with
3 Petitioner's criminal conviction, by the Department of Justice in 1998.
4 (Dkt. 65, Ex. K). The typewritten portion of the form indicates
5 Petitioner's birthdate as "7/27/76;" however, "7/27/77 (?)" is hand
6 written in the space adjacent. (Id.).

7 Even if the Form I-213 were admissible, the Court is not persuaded
8 that the handwritten notation, "7/27/77 (?)" implies that Petitioner
9 was born in 1977. Petitioner has provided no evidence indicating who
10 made the notation, or the circumstances under which it was made.
11 Rather, the handwritten notation suggests only what the Court already
12 knows, namely that there exists arguably conflicting evidence regarding
13 Petitioner's birthdate. Merely pointing to this conflict, however,
14 does not aid the Court in resolving it. Therefore, this evidence is
15 unhelpful and does not alter the Court's previous decision.

16 **F. Affidavits of Family and Friends**

17 In its July 25, 2011 order, the Court invited Petitioner to submit
18 "a memorandum with attached declarations that allow the Court to
19 determine whether the [exhibits A through L] are admissible," and "if
20 [they] are found admissible, why they should change the Court's earlier
21 findings." (Dkt. 68).

22 In response, Petitioner filed fifteen (15) affidavits from
23 himself, family, and friends. (Dkt. 69, Ex. A-O). Certain of these
24 affidavits complied with the Court's order by attempting to lay
25 foundations with respect to Exhibits A through L, and these are
26 incorporated in the Court's foregoing discussion. (Dkt. 69, Ex. A, B,
27
28

1 F, M, N).¹³

2 However, the remaining affidavits comprise the testimony of
3 Petitioner's relatives and friends attempting to show that Petitioner
4 was born in 1977. (Dkt. 69, Ex. C, D, E, G, H, I, J, K, L). These
5 affidavits are beyond the scope of this Court's limited remand because
6 they do not shed any light on the admissibility or weight to be
7 accorded to the "new" exhibits submitted by Petitioner. Nonetheless,
8 in reviewing the affidavits, the Court concludes that even if they were
9 considered, the affidavits have little persuasive value as they are
10 biased and, at any rate, do not controvert the substantial documentary
11 evidence pointing to Petitioner's 1976 birthdate. As such, they do not
12 shift the preponderance of the evidence in Petitioner's favor.

13 **III. CONCLUSIONS OF LAW**

14 "Evidence of foreign birth . . . gives rise to a rebuttable
15 presumption of alienage, and the burden then shifts to the petitioner
16 to prove citizenship." Martinez-Madera v. Holder, 559 F.3d 937, 940
17 (9th Cir. 2009) (quoting Scales v. I.N.S., 232 F.3d 1159, 1163 (9th
18 Cir. 2000)). It is undisputed that Petitioner was born in Armenia.
19 Petitioner therefore bears the burden of proving that he is an American
20 citizen. Lim v. Mitchell, 431 F.2d 197, 199 (9th Cir. 1970); see also
21 Carrillo-Lozano v. Holder, No. CV-09-1948-PHX-NVW, 2010 WL 2292981, at
22 *1 (D. Ariz. June 8, 2010) (same); Anderson v. Holder, No. CIV. 2:09-
23 2519 WBS JFM, 2010 WL 1734979, at *3 (E.D. Cal. Apr. 27, 2010) (same).

24
25 ¹³ The Court recognizes that in determining Petitioner's true birth
26 date, the Court could rely solely on the testimony of Susanna if it
27 found her to be credible. However, in view of the Court's findings
28 regarding the contrived origin of the 1997 Birth Certificate, these
observations only serve to reinforce the Court's conclusion in its
previous order that the mother's testimony is unreliable.

1 The parties, in their initial Joint Statement re: New Case Status
2 Conference, agreed that Petitioner bears the burden of proving his
3 citizenship. (Dkt. 8 at 2-3 ("The parties agree that Demirchyan must
4 prove four essential facts in order to be eligible for derivative
5 citizenship. . . . To date, the administrative and judicial proceedings
6 have focused on the . . . requirement [that his mother was naturalized
7 before he turned eighteen]."))).

8 Based on the Court's findings of fact, the Court concludes as a
9 matter of law that Petitioner has failed to meet his burden of proving
10 by a preponderance of evidence that he is a United States citizen.
11 Petitioner has failed to prove that he was born in 1977, and therefore
12 that he was under the age of 18 at the time that his mother was
13 naturalized in December 1994. The Court has concluded that the
14 entirety of the admissible and credible evidence supports a finding
15 that Petitioner was born in 1976. The only evidence to the contrary
16 was either inadmissible as a matter of law or unreliable.

17 Accordingly, Petitioner is not entitled to citizenship under 8
18 U.S.C. § 1432(a) (West 1994).

19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court refrains from modifying its
21 original conclusion: the Petition is DENIED. While the Court
22 recognizes the severity of this result, Petitioner has failed to carry
23 his burden to prove by a preponderance of the evidence that he was in
24 fact born in 1977. There were simply too many questions and doubts
25 surrounding the proffered exhibits for such evidence to outweigh the
26 contrary evidence of a 1976 birth year. The Government shall file a
27 proposed final judgment within five days, at which time the parties
28

1 shall have fourteen days to notify the Ninth Circuit per its Order
2 dated June 14, 2011.

3
4 IT IS SO ORDERED.

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6 DATED: March 28, 2013



7 STEPHEN V. WILSON

8 UNITED STATES DISTRICT JUDGE
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